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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY WILLIAM PENA,

Defendant and Appellant.

2d Crim. No. B291840  
(Super. Ct. No. 18PT-00556)  
(San Luis Obispo County)

Anthony William Pena appeals an order committing him for further treatment as a mentally disordered offender (MDO). (Pen. Code, §§ 2962, 2966.)<sup>1</sup> We conclude, among other things, that substantial evidence supports the order. We affirm.

FACTS

In 2016 Pena was convicted of assault by means of force likely to produce great bodily injury. (§ 245, subd. (a)(4).) He was sentenced to state prison. In 2017 the Board of Parole

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<sup>1</sup> All statutory references are to the Penal Code.

Hearings (BPH) initially determined he met the “criteria of . . . section 2962” to be committed as an MDO.

At a May 18, 2018, hearing, the BPH found Pena met the requirements for MDO treatment. Pena filed a petition for hearing. (§ 2966, subd. (b).) The trial court appointed counsel for Pena and he waived his right to a jury trial.

Psychologist Brandi Mathews testified Pena suffers from schizophrenia, a severe mental disorder. He has hallucinations and “a history of paranoia.” His severe disorder was a cause or an aggravating factor in his commission of the assault offense. He had attacked a stranger without “provocation” and his behavior was “quite bizarre.”

Mathews testified Pena was in “clinical remission” as of the BPH hearing, but he “could not be kept in remission without treatment as . . . defined by the statute.” She said that “he has not voluntarily followed his treatment plan” involving “his attendance to his treatment groups at the hospital.” The hospital requires patients to attend “approximately 80 percent” of those group sessions. Pena attended only 61 percent of those sessions. Mathews said that he was “not complying with the treatment as a reasonable person should” and there was a “lack of effort” on his part. Pena represents “a substantial risk of physical harm to others because of his severe mental disorder.” He lacks “insight” about his disorder and his symptoms.

Mathews testified that Pena is “currently psychiatrically stable” because of his “medication compliance.” But he does not believe he needs medications. “[I]f he does not think he needs medications, he’ll likely stop taking the medications and at that time . . . his symptoms will return and he will no longer be in remission at that time.”

The trial court found Pena “needs to be [re]committed . . . for treatment as required by law.” In its order the court found Pena is “a person as described in . . . [section] 2962 et seq. and the requisite criteria were found to be true.”

## DISCUSSION

### *Substantial Evidence*

Pena contends there is insufficient evidence to support the finding that he could not be kept in remission without treatment. We disagree.

“In reviewing a claim of insufficient evidence, we view the entire record in the light most favorable to the judgment . . . .” (*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1398.) We do not weigh the evidence or decide the credibility of the witnesses.

To obtain an order committing a defendant for treatment as an MDO, the People must prove the requirements of section 2962. Subdivision (d)(1) of section 2962 requires the People to prove, among other things, that the defendant “has a severe mental disorder, that the disorder is not in remission, *or* [that the disorder] *cannot be kept in remission without treatment . . . .*” (Italics added.) “Under section 2962, not voluntarily following the treatment plan is essentially an exception to the finding that the illness is in remission.” (*People v. Beeson, supra*, 99 Cal.App.4th at p. 1400.) “[T]he statute clearly provides that a person’s failure to voluntarily follow his treatment plan may be grounds for a finding that he cannot be kept in remission without treatment.” (*Ibid.*)

Here Mathews testified Pena’s disorder could not be kept in remission without treatment because “he has not voluntarily followed his treatment plan . . . in regards to his attendance to his treatment groups at the hospital.” Pena attended only 61

percent of those treatment sessions. The hospital requires a patient to attend 80 percent of those sessions. Mathews said he did not comply “with the treatment as a reasonable person should” and he showed a “lack of effort” to comply. This testimony supports a finding that Pena was not voluntarily following the treatment plan. (*People v. Beeson, supra*, 99 Cal.App.4th at p. 1400.)

Pena does not deny he failed to attend a substantial number of treatment sessions. He claims Mathews’s testimony about the treatment attendance standard was “arbitrary and subjective.” Mathews, however, testified this standard was set by the hospital. Pena claims this standard is not found in the MDO statute. (§ 2962.) But treatment requirements not set forth in statutes are matters to be decided by the professionals and hospitals that treat the patients. (*Wickline v. State of California* (1986) 192 Cal.App.3d 1630, 1644-1645 [the patient’s treating doctors decide “the course of treatment that was medically necessary to treat the ailment”].) Medical professionals are in the best position to set standards and to determine whether the patient needs treatment and has complied with treatment. (*Ibid.*; *Gunn v. Employment Development Dept.* (1979) 94 Cal.App.3d 658, 664, fn. 6.)

Mathews testified that Pena’s attendance at group sessions was part of his treatment. She said this was “psychosocial treatment,” which is a component of his treatment at the hospital. (*Farrell L. v. Superior Court* (1988) 203 Cal.App.3d 521, 527 [group therapy is a recognized part of a patient’s treatment with other persons but it is “designed to facilitate the patient’s treatment”].) Pena’s nonattendance problem was due to his negative attitude about such treatment. He told staff that such

treatment groups are “stupid.” Pena, however, is in no position to diagnose his own disorder and establish a treatment plan. That is a matter for the doctors who treat him. (*Wickline v. State of California*, *supra*, 192 Cal.App.3d at pp. 1644-1645; *Gunn v. Employment Development Dept.*, *supra*, 94 Cal.App.3d at p. 664, fn. 6.)

Moreover, there was testimony about the substantial benefit of group therapy in treating Pena. Mathews said there is “a high likelihood” that attendance at these groups provides “the potential for him to learn and acquire the knowledge to increase his insight” into his mental disorder. “We apply a reasonable person standard in determining whether a person has followed his treatment plan.” (*People v. Beeson*, *supra*, 99 Cal.App.4th at p. 1399.) Mathews testified Pena did not comply “with the treatment [plan] as a reasonable person should.”

The People contend, in addition to the treatment attendance issue, Mathews highlighted other factors that support the trial court’s order. We agree.

Mathews testified these factors include whether Pena understands “he has a mental illness” and whether “he [is] learning what he needs to learn through going to those groups.” She said Pena “lacks insight into his mental illness”; he “minimizes [its] severity”; he is “unable to describe symptoms associated with his mental illness.” He does “not believe he needs medications.” Pena told Mathews “he would stop taking his medications if he were released in the community.”

Mathews testified the medications are what keep Pena currently “psychiatrically stable.” But Pena does not understand the “benefits of his medications.” “So if he does not think he needs medications, he’ll likely stop taking the medications and at

that time . . . his symptoms will return and he will no longer be in remission at that time.” Pena does not believe he has a mental illness and he’s “not likely to go seek treatment if he doesn’t believe he has an illness.” “A reasonable person, whose mental disorder can be kept in remission with treatment, must, at a minimum, acknowledge if possible the seriousness of his mental illness and cooperate in all the mandatory components of his treatment plan.” (*People v. Beeson, supra*, 99 Cal.App.4th at p. 1399.) The evidence is sufficient.

DISPOSITION

The order is affirmed.

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GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Matthew G. Guerrero, Judge  
Superior Court County of San Luis Obispo

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